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MELODIE A. VIRTUE  
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JUN 17 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

June 17, 1996

OUR FILE NO.  
1410-101-63

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

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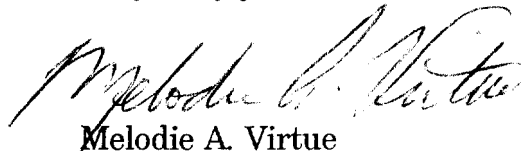
RE: MM Docket No. 96-95  
RM-8787  
Papillion and Plattsmouth, NE and  
Osceola, IA

Dear Mr. Caton:

Transmitted herewith, on behalf of LifeStyle Communications Corp.,  
are an original and four copies of its **COUNTERPROPOSAL AND  
OPPOSITION TO NOTICE OF PROPOSED RULE MAKING AND  
ORDER TO SHOW CAUSE** regarding the above-referenced proceeding.

Should further information be necessary, please communicate directly  
with this office.

Very truly yours,



Melodie A. Virtue

Enclosures (5)  
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JUN 17 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before The  
**Federal Communications Commission**

Washington, D.C. 20554

In The Matter Of )  
 )  
Amendment of Section 73.202(b) ) MM Docket No. 96-95  
Table of Allotments, ) RM-8787  
FM Broadcast Stations. )  
(Papillion and Plattsmouth, Nebraska, and )  
Osceola, Iowa) )  
 )  
To: Chief, Allocations Branch )

**Counterproposal  
and  
Opposition to  
Notice of Proposed Rule Making  
and Order to Show Cause**

LifeStyle Communications Corp. ("LifeStyle"), licensee of  
KJJC(FM), Osceola, Iowa, by counsel and pursuant to Section 1.420 of  
the Commission's Rules, hereby respectfully submits its counterproposal  
and opposition to the *Notice of Proposed Rule Making and Order to Show  
Cause*, DA 96-554, released April 25, 1996 (hereinafter "NPRM"). In sup-  
port thereof, the following is submitted:

1. At the request of Platte Broadcasting, Inc. (hereinafter  
"Petitioner"), licensee of KOTD-FM, Plattsmouth, Nebraska, the Commis-  
sion proposes to substitute Channel 295C3 for Channel 295A so that  
Petitioner can upgrade the facilities of KOTD-FM. In order to make that  
upgrade, however, LifeStyle's station, KJJC, must change channels from

Channel 295C2 to Channel 296C2. LifeStyle hereby opposes that change and submits its own counterproposal that will serve the public interest better than Petitioner's proposal.

2. Specifically, LifeStyle requests that the Commission amend the FM Table of Allotments, as set forth in Rule 73.202(b), 47 C.F.R. § 73.202(b), to add Channel 295A to Papillion, Nebraska, and, to accommodate this new station, to substitute Channel 299A for Channel 295A at Plattsmouth, Nebraska. LifeStyle, therefore, requests that the FM Table of Allotments be amended, as follows:

Present:	Proposed:
Papillion, Nebraska	295A
Plattsmouth, Nebraska 295A	299A

3. Although KOTD-FM would be unable to upgrade its facilities as proposed in the NPRM, LifeStyle's counterproposal would provide a first local service to Papillion, Nebraska, which is the county seat of Sarpy County, Nebraska. *See Attached Engineering Statement. In Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1982), the Commission set forth the priorities it would follow in selecting from among competing channels plans. After provision of first and second aural service (Priorities Number 1 and 2), provision of first local service is priority number 3, which is met in LifeStyle's counterproposal. None of

the first three priorities are satisfied by the proposal set forth in the NPRM.

4. The fourth and last allotment priority listed in *Revision of FM Assignment Policies and Procedures* is other public interest matters. Here, too, LifeStyle's counterproposal must prevail. As set forth in the attached Engineering Statement, the proposed new aural service on Channel 295A at Papillion would serve a population of 590,507. In contrast, KOTD-FM proposal would only provide a net gain in service to a population of 136,255.<sup>1</sup> *Id.* LifeStyle's counterproposal would provide new service to 454,252<sup>2</sup> more people than the proposal set forth in the NPRM. *See id.* Consequently, the public interest would be better served by a grant of LifeStyle's counterproposal.

5. Further, the community of Papillion, proper, has a higher population count than does the community of Plattsmouth, Petitioner's community of license. According to the *Rand McNally 1993 Commercial Atlas and Marketing Guide*, p. 409, Papillion's population in the 1990 Census was 10,372; whereas, Plattsmouth's population was 6,412. Moreover, Papillion's population grew faster than Plattsmouth's population between 1980 and 1990. In 1980, Papillion's population was 6,399

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<sup>1</sup> KOTD-FM presently serves 480,805. Its upgraded facilities would serve 617,060. The number of new people served, therefore, would be 136,255. *See* attached Engineering Statement.

<sup>2</sup> 590,507 less 136,255 equals 454,252.

and Plattsmouth's 1980 population was 6,295. *Id.* Papillion and Plattsmouth were nearly the same size in 1980, but Papillion grew by almost 4,000 people while Plattsmouth gained only 117 people. By any measure, Papillion's need for a new station is greater than the need for KOTD-FM to expand its coverage in Plattsmouth.

6. An allotment of Channel 295A to Papillion would serve the public interest better than upgrading the present allotment at Plattsmouth. In addition to being the county seat for Sarpy County, Papillion has its own Mayor and City Council form of local government. *See* Engineering Statement, page 2. The Papillion/La Vista unified school district serves the residents of Papillion. Further, Papillion has its own zip code. *Id.* Although Petitioner's station also is located in a county seat, it already has a local station in KOTD-FM. LifeStyle proposes the allotment of a new station to a county seat that does not have a local station.


7. In the attached Declaration of LifeStyle's President, LifeStyle declares its present intention to apply for the new station on Channel 295A at Papillion, Nebraska, and to build the station promptly upon issuance of a construction permit. Further, if Lifestyle is awarded the construction permit, it commits to reimbursing KOTD-FM for its reasonable expenses in changing its channel to Channel 299A. *See Circleville, Ohio*, 8 FCC 2d 159 (1967).

8. All of these factors together compel the conclusion that LifeStyle's counterproposal better serves the public interest than the proposal set forth in the NPRM. In addition, since LifeStyle is interested in applying for a construction permit if Channel 295A is allotted to Papillion, it must oppose the NPRM which would preclude such an allotment and force KJJC to change channels.<sup>3</sup>

WHEREFORE, the premises considered, LifeStyle Communications Corp. respectfully requests that the Commission reject the proposal set forth in the NPRM and accept LifeStyle's counterproposal to substitute Channel 299A for Channel 295A at Plattsmouth, Nebraska, and to allot Channel 295A at Papillion, Nebraska.

Respectfully submitted,

LIFESTYLE COMMUNICATIONS CORP.

By 

John M. Pelkey  
Melodie A. Virtue  
Its Attorneys

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June 17, 1996

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<sup>3</sup> The ability of KJJC to change channels from 395C2 to 396C2 presupposes that the Commission grants the application of Ames Broadcasting Company (FCC File No. BPH-930816IE) to change channels for Station KCCQ(FM), Ames, Iowa, from 296A to Channel 286C3, which contained a request for waiver of Rule 73.215(e). LifeStyle notes that the application has been pending for nearly three years. LifeStyle would oppose a change to channel 296C2 for KJJC if its own channel move, if required, were significantly delayed because of KCCQ's application. The uncertainty of the timing of such a channel change means that LifeStyle would be unable to promote KJJC's current channel position for an indefinite period of time.



# WHEELER BROADCAST CONSULTING

## ***Engineering Report***

### ***Counterproposal to RM-8787***

This consultant has been retained by Lifestyle Communications Corporation for the purpose of reviewing RM-8787, Docket 96-95, and providing technical support to a counterproposal to the same.

A review of the proposal by this consultant reveals that Channel 299 A can be substituted for Channel 295 A at Plattsmouth, Nebraska, in full compliance with the Commission's minimum distance separations as set forth in 47 CFR 73.207, at the presently licensed KOTD-FM transmitter location<sup>1</sup>. Exhibit 1 of this report is a search of the Commission's June 7, 1996 FM database that confirms the availability of channel 299 A at Plattsmouth.

The channel 299 A substitution at Plattsmouth will then allow channel 295 A to be re-allocated to Papillion, Nebraska as its first local service with the imposition of an 11.5 km, N.E. site restriction<sup>2</sup> so as to clear the IF separation requirements to KEFM in Omaha, Nebraska. Exhibit 2 of this report is a search of the Commission's June 7, 1996, database that demonstrates compliance with all minimum spacing requirements. Exhibit 3 is a digitally generated map that depicts the predicted service contours of the channel 295 A facilities and the corporate boundaries of Papillion. As shown in Exhibit 3, the proposed Papillion allocation is in compliance with the city grade coverage requirements as set forth in 47 CFR 73.315.

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<sup>1</sup> The coordinates of the KOTD-FM License are listed as 41° 09' 22" N by 95° 47' 03" W.

<sup>2</sup> The reference coordinates for the proposed channel 295 A allocation at Papillion are 41° 12' 08" N by 95° 55' 35" W, the point closest to Papillion where all minimum spacing requirements are met.

### Papillion Nebraska

The city of Papillion, Nebraska is listed in the National Atlas of the United States of America with coordinates of 41° 09' 00" N; 96° 02' 42" W. The 1990 US Census lists the population of Papillion as 10,372 Persons. Papillion is the County Seat of Sarpy County, Nebraska and has an independent Mayor and City Council form of local government. Papillion has its own Zip Code, 68046. Education for the residents of Papillion is provided by the Papillion / La Vista unified school district. Accordingly, Papillion is a legitimate community that could not be considered to be a "quiet village"<sup>3</sup> and thus is eligible and deserving of its first local service.

### Comparative Service

In addition to providing Papillion, Nebraska its first local service, the proposed channel 295 A substitution will provide a new service to a population of 590,507 persons according to the 1990 US Census. Our determinations indicate that the proposed KOTD channel 295 C3 facilities proposed by Platte Broadcasting Company, Inc. would serve a population of 617,060<sup>4</sup> Persons however, the existing KOTD class A facility provides service to 480,805 persons, a net difference of 136,255 persons.

The Commission's allocation priorities<sup>5</sup> are as follows:

- 1) First Fulltime Aural Service.
- 2) Second Fulltime Aural Service.
- 3) First Local Service.
- 4) Other Public Interest Matters.

The proposed Papillion, Nebraska substitution prevails as it provides a first local service (priority 3) and a new service to a larger population (priority 4) than does the proposed Plattsmouth, Nebraska class C3 upgrade.

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<sup>3</sup> See James Reeder v. FCC, 865 F.2d 1298, 1305 (D.C. Cir. 1989).

<sup>4</sup> The technical support to the petition in RM-8787 indicates a population of 618,873 persons. It is believed that this determination was based on 8 cardinal radials while the analysis in this report utilizes 360 evenly spaced radials.

<sup>5</sup> See 90 FCC 2d 88, 91 (1982)



### Methodology

All site information for existing FM facilities was gleaned from the June 7, 1996 release of the Commission's FM database. All height above average terrain calculations were based on 8 cardinal radials as set forth in 47 CFR 73.313 and terrain data was extracted by a linear interpolation of the NGDC 30 second terrain database. Predicted service contours were based on 360 evenly spaced radials and population determinations were based on a digital overlay of minor civil subdivision data as provided by the PL-94-171 census data files. The census files draw data from the 1990 US Census and the algorithm assumes uniform population distribution when only a portion of a minor civil subdivision is encompassed. Determinations of service were based on the 60 dBu contours of the respective facilities.

### Conclusion

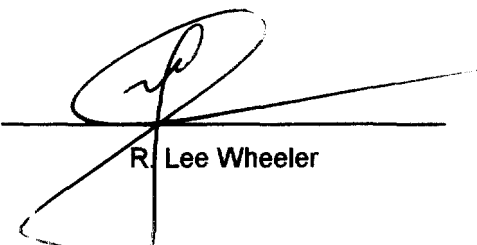
Based on the above we find that the public interest would be best served by substituting channel 299 A for Channel 295 A at Plattsmouth, NE and modifying the license of KOTD accordingly and allocating Channel 295 A to Papillion, Nebraska as its first local service. The proposal is as follows:

<u>City</u>	<u>Present</u>	<u>RM-8787</u>	<u>Counterproposal</u>
Papillion, NE	----	----	295 A
Plattsmouth, NE	295 A	295 C3	299 A
Osceola, IA	295 C2	296 C2	295 C2

### Certification

All information contained in this report is true and accurate to the best of my belief. Having had numerous matters before the Commission, my qualifications are a matter of record.

6/14/96  
Date

  
R. Lee Wheeler

WHEELER BROADCAST CONSULTING  
6025 Martway - Suite 112 - Mission KS 66202

Exhibit 1  
Alternate Channel - KOTDFM

REFERENCE		CLASS A	DISPLAY DATES
41 05 28 N			DATA 06-07-96
95 48 15 W		Current rules spacings	SEARCH 06-14-96
----- CHANNEL 299 -107.7 MHz -----			

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
KWPNFM	300C2	West Point	NE	316.6	106.14	106.0	0.14 <
CP CN	41 47 06	96 40 39	50.000 kW	97M	66.0	65.9	
Kelly Communications, Inc.					BPH900713IH		960612
>From channel 300A per D88-493							
KMAJFM	299C	Topeka	KS	182.4	229.48	226.0	3.48
LI CN	39 01 34	95 54 58	100.000 kW	370M	142.6	140.5	
Midland Broadcasters, Inc.					BLH861103KC		
KEZG	297C1	Lincoln	NE	239.4	79.27	75.0	4.27
LI CN	40 43 38	96 36 49	100.000 kW	168M	49.3	46.6	
KLIN, Inc.					BLH810721AA		
KWPNFM	300A	West Point	NE	316.6	106.14	72.0	34.14
AP CN	41 47 06	96 40 39	6.000 kW	98M	66.0	44.8	
Kelly Communications, Inc.					BMLH921014KF		
>*To channel 300C2 PER D88-493							
KWPNFM	300A	West Point	NE	316.6	106.14	72.0	34.14
LI CN	41 47 06	96 40 39	3.000 kW	100M	66.0	44.8	
Kelly Communications, Inc.					BLH880726KB		
>*To channel 300C2 PER D88-493							
KICDFM	299C1	Spencer	IA	13.3	236.88	200.0	36.88
LI CN	43 10 00	95 08 45	100.000 kW	94M	147.2	124.3	
Iowa Great Lakes B/Cting Co.					BLH7197		
AD298	298A	Castana	IA	355.4	109.45	72.0	37.45
AD	42 04 24	95 54 36	0.000 kW	0M	68.0	44.8	
Gene Zortman					RM8791		960307
KKRF.C	300C3	Stuart	IA	69.8	134.05	89.0	45.05
CP ZCN	41 30 25	94 18 06	12.000 kW	144M	83.3	55.3	
Coon Valley Communications In					BPH951031IC		971107
>One-Step Application from Channel 300A							
KSYZFM	299C1	Grand Island	NE	271.6	245.58	200.0	45.58
LI CN	41 09 13	98 43 38	100.000 kW	273M	152.6	124.3	
Manchik Broadcasting Inc.					BLH821112AO		

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Exhibit 2  
New Service - Papillion, NE

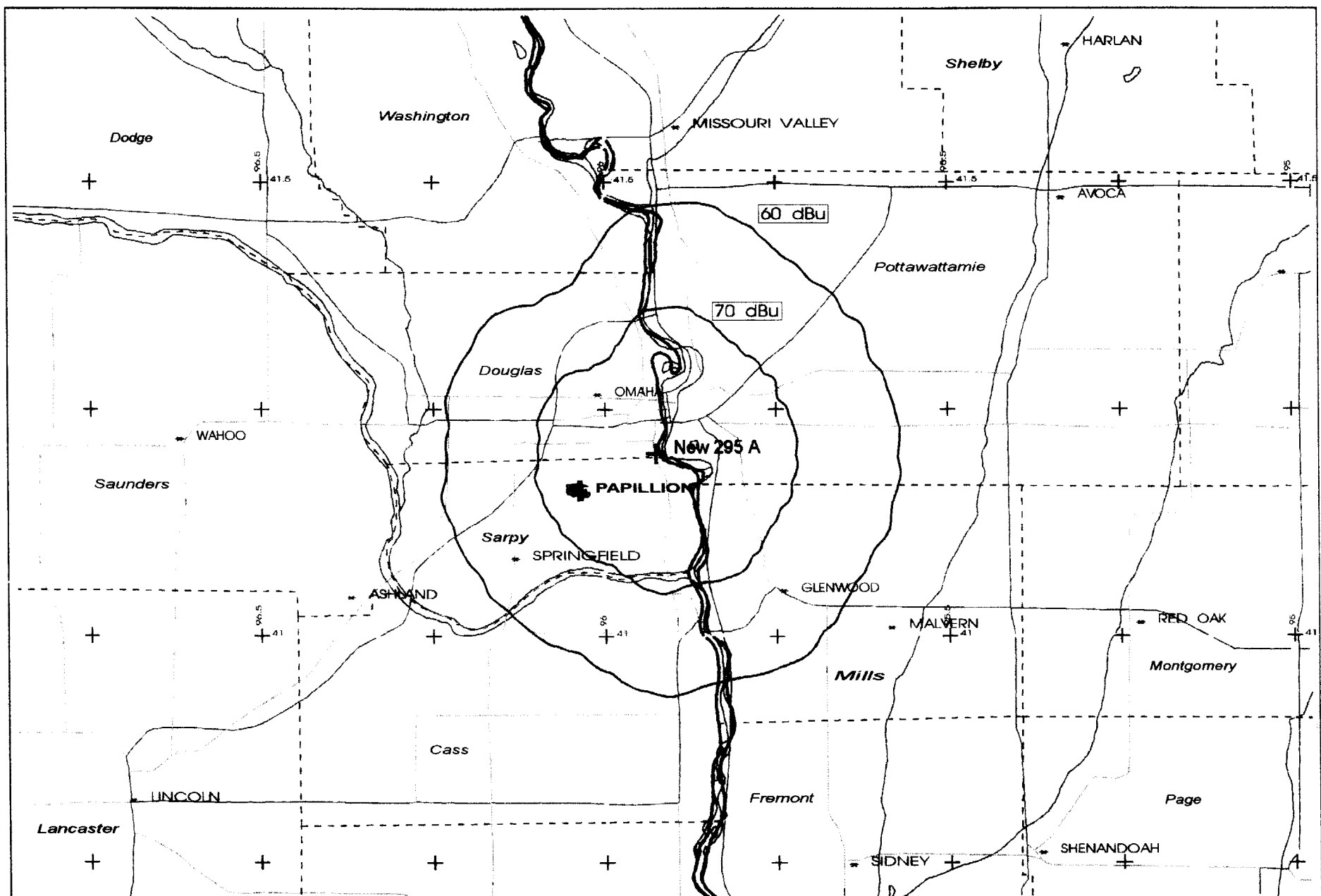
REFERENCE	CLASS A	DISPLAY DATES
41 12 08 N		DATA 06-07-96
95 55 35 W	Current rules spacings	SEARCH 06-14-19
----- CHANNEL 295 -106.9 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD295	295C3	Plattsmouth	NE	113.2	12.99	142.0	-129.01 *
AD	41 09 22	95 47 03	0.000 kW	OM	8.1	88.3	
	Platte Broadcasting Company,				RM8787		960321
>Site Restricted 18.4km Northeast							
DE295	295A	Plattsmouth	NE	140.3	16.05	115.0	-98.95 *
DE	41 05 28	95 48 15	0.000 kW	OM	10.0	71.5	
	Platte Broadcasting Company,				RM8787		960321
KOTDFM	295A	Plattsmouth	NE	140.3	16.05	115.0	-98.95 *
LI ZCN	41 05 28	95 48 15	6.000 kW	100M	10.0	71.5	
	Platte Broadcasting Company,				BLH930624KH		
KEFM	241C	Omaha	NE	239.8	29.01	29.0	0.01 <
LI CN	41 04 15	96 13 30	100.000 kW	430M	18.0	18.0	
	Webster Communications Compan				BLH950719KA		
KEXL	294C	Norfolk	NE	299.0	167.30	165.0	2.30 <
LI CN	41 55 59	97 40 49	100.000 kW	313M	104.0	102.6	
	Wjag, Incorporated				BLH880502KA		
KEZG	297C1	Lincoln	NE	227.6	78.29	75.0	3.29
LI CN	40 43 38	96 36 49	100.000 kW	168M	48.7	46.6	
	KLIN, Inc.				BLH810721AA		
DE295	295C2	Osceola	IA	96.4	174.50	166.0	8.50
DE	41 01 34	93 51 43	0.000 kW	OM	108.4	103.2	
	Platte Broadcasting Company,				RM8787		960321
KJJC	295C2	Osceola	IA	96.4	174.50	166.0	8.50
LI CN	41 01 34	93 51 43	27.000 kW	198M	108.4	103.2	
	Lifestyle Communications Corp				BLH890308KB		
KTPK	295C	Topeka	KS	179.8	241.63	226.0	15.63
LI CN	39 01 34	95 54 58	100.000 kW	369M	150.2	140.5	
	Topeka BroadComm, Inc.				BLH861014KA		
KISP	292A	Blair	NE	345.1	47.72	31.0	16.72
LI CN	41 37 03	96 04 23	1.250 kW	140M	29.7	19.3	
	Sunrise Broadcasting of Nebra				BLH850110KT		

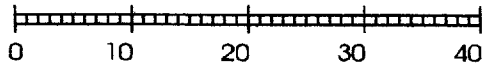
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CLASS A

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
-----							
>*To Channel 268C3 per D92-155							
KIBZ.C	292C2	Lincoln	NE	236.7	78.60	55.0	23.60
CP CN	40 48 48	96 42 25	50.000 kW	58M	48.8	34.2	
Rock Steady, Inc.					BPH950413MH		971026
>One-Step Application From Channel 292A							
KDSNFM	296A	Denison	IA	28.2	105.12	72.0	33.12
LI CN	42 02 11	95 19 50	3.000 kW	91M	65.3	44.8	
Ridgeway Broadcasting Company					BLH4079		
KDSNFM	296A	Denison	IA	28.2	105.12	72.0	33.12
AP CN	42 02 11	95 19 50	6.000 kW	91M	65.3	44.8	
Ridgeway Broadcasting Company					BMLH960415KD		
KIBZ	292A	Lincoln	NE	236.7	78.60	31.0	47.60
LI CN	40 48 48	96 42 25	3.000 kW	65M	48.8	19.3	
Rock Steady, Inc.					BLH910115KB		
>*To Channel 292C2 per One-Step Application BPH-950413MH							
CP294	294C3	Lake City	IA	42.3	137.82	89.0	48.82
CP CN	42 07 14	94 48 49	25.000 kW	100M	85.7	55.3	
Ames Broadcasting Company					BPH930901MI		960630
-----							



Scale in km



Proposed Channel 295 A Papillion, NE

N. Lat. 41 12 08

W. Lng. 95 55 35

EXHIBIT 3


L. WHEELER - 06/96

## DECLARATION

I, James S. McBride, hereby declare under penalty of perjury, as follows:

- 1) I am President, Treasurer, Director and majority stockholder of LifeStyle Communications Corp. ("Lifestyle").
- 2) It is LifeStyle's present intention to apply for Channel 295A if it is allotted to Papillion, Nebraska, and, if our application for a construction permit is granted, to build the station promptly.
- 3) If LifeStyle obtains the construction permit for Channel 295A at Papillion, Nebraska, LifeStyle commits to reimbursing Station KOTD-FM Plattsmouth, Nebraska, for its reasonable costs incurred in changing its channel from Channel 295A to Channel 299A.

LIFESTYLE COMMUNICATIONS CORP.

By   
James S. McBride  
President

Dated: June 14, 1996

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley Bader & Potts P.L.C., hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered\*, to the following:

Richard J. Hayes, Jr., Esq.  
13809 Black Meadow Road  
Greenwood Plantation  
Spotsylvania, VA 22553  
Counsel to Petitioner

  
Barbara Rascon

June 17, 1996